



Complaint No. 364/2020

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 364 OF 2020

Uma Shankar Sharma

....COMPLAINANT(S)

VERSUS

Jindal Realty Pvt. Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta**

**Chairman**

**Anil Kumar Panwar**

**Member**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 26.10.2021**

**Hearing: 10<sup>th</sup>**

**Present: - Mr. Chaitanya Singhal & Mr. Ajay Nara, Counsel for the complainant  
Mr. Drupad Sangwan, Counsel for the respondent**

### **ORDER (RAJAN GUPTA-CHAIRMAN)**

This case was heard at length on 07.09.2021. Said order is reproduced below: -

*"This case was heard at length on 14.07.2021. Said order is reproduced below for reference:-*

*Complainant purchased a unit no. E-144 (villa) in the respondent's project named as Jindal global city, Sonipat for basic sale price of Rs 44,46,851/- vide builder buyer agreement dated 10.11.2011. As per terms of the said agreement possession of the said unit was supposed to be delivered by 10.11.2014. The complainant has paid Rs 16,70,772/- against total sale consideration of Rs 51,26,755/- and the last payment amounting to Rs 3,07,875/- was made on 10.01.2012. It has been alleged by the complainant that respondent has not carried out any construction work on the site and has wrongly cancelled the allotment of said villa vide cancellation letter dated 08.12.2016. Now, the present complaint is filed seeking possession of the booked unit alongwith delay interest after setting aside the alleged cancellation letter.*

*2. The complainant on the last date of hearing had moved an application in order to amend the complaint for seeking only the relief of possession and delay interest. His application was allowed and copy of amended complaint was supplied to respondent, who had filed reply to the said application in the registry of office on 09.07.2021 and its copy has been supplied to complainant's counsel.*

*3. During the course of arguments, it has revealed that the complainant till the date of cancellation of allotment by respondent had paid amount of Rs 16,70,772/- against total sale consideration of Rs 51,26,755/-. The respondent's plea is that he had effected cancellation of allotment because the complainant had failed to pay the amounts as per construction linked plan opted by her. Even if it were assumed that the respondent was entitled to effect cancellation on complainant's default in paying due instalments, the respondent at the time of effecting cancellation was required to specify in the cancellation letter the amount which he was entitled to forfeit in terms of BBA and balance amount required for refund to complainant. It thus needs to be*



*ascertained as to whether such compliance was made by the respondent at the time of effecting cancellation of allotment. At the same time, it is also needs to be examined as to whether the present complaint, which has been filed after lapse of 4 years from cancellation, is maintainable.*

4. *Further, it is significant to notice that the complainant is now pressing for the relief of possession and does not want to pursue the relief of refund of paid amount. The respondent on the other hand has today submitted that he is not in a position to offer possession because the project is not being further developed and constructed for its completion. According to respondent's counsel, the respondent is inclined to settle the matter amicably or in the alternative to refund the already paid amount.*

5. *The Authority in the backdrop of all the circumstances discussed above would advise the parties to conduct a joint meeting in order to arrive at an amicable settlement and in case such settlement does not fructify, the parties shall come prepared for arguments on next date of hearing particularly on the points as observed in preceding paragraphs. With these directions, the case is adjourned to 07.09.2021. Meanwhile respondent is directed to maintain status quo regarding the allotment of villa no. E-144.*

2. *Today, Mr. Ajay Nara, Ld. Counsel for complainant has filed his vakalatnama and same is taken on record. Ld. counsel for complainant informed that his client is not interested in amicable settlement of dispute so case be heard on merits. Initiating his arguments he stated that allotment of unit was wrongly cancelled by the respondent as no construction work was carried out by the respondent which is evident from the fact that even today the said plot on which villa was supposed to be constructed is lying vacant. Further he stated that his client is interested in possession of villa E-144 or plot only. He has refused refund of paid amount of Rs 16,70,772/- with interest being offered by respondent to him.*

*4*

3. *Ld. counsel for respondent argued that present complaint is not maintainable as complainant has approached this Authority after 4 years from the cause of action i.e. cancellation of allotment on 08.12.2016. Further, he stated that respondent had got done excavation and PCC work on the plot on which villa was supposed to be constructed. Bill for said work and photographs of plot are placed on record in support of his arguments. After commencement of construction demand of Rs 5,13,800/- was raised on 02.09.2015 but same was not honoured by complainant. Thereafter several reminders were issued to him but in vain, therefore allotment of unit was cancelled on 08.12.2016. Regarding possession of villa, it has been stated that construction team of the respondent has left after completing the project and now respondent is not in position to construct said villa after taking various approvals from concerned department. As of today, the developer wishes to resell the booked unit in the form of plot only.*

4. *At this stage complainant's counsel has referred to an email dated 24.04.2017 wherein conversion charges for villa to plot has been shared by respondent to him. He insists upon allotment of plot to him at the same rate as mentioned in said email.*

5. *After hearing submission of both parties and perusing relevant record it has been observed that fact of cancellation of allotment of unit on 08.12.2016 and present status of vacant plot has not been disputed by both parties. On the question of limitation complainant agrees that he has not approached any other forum during the time period of 4 years and had filed complainant before this Authority initially for refund and thereafter for possession of villa and quashing of cancellation by way of an amendment application. Regarding cancellation of allotment it has been observed that respondent has cancelled allotment on account of non-payment of demand of Rs 5,13,800/- raised on commencement of construction. Till that moment the respondent was justified in his act but he himself has not complied with the terms and conditions of clause 5 of cancellation letter which reads as under:-*

*"5. Accordingly, you are hereby called upon to make the payment of the due amount of Rs 5,13,800/- as mentioned in the demand letter dated 02.09.2015, alongwith interest*

4

*@18% p.a. within a period of 30 days from the date of receipt of this notice, failing which the buyers agreement dated 10.11.2011 shall stand terminated/ cancelled. Upon termination/cancellation , the earnest money amounting to Rs 7,67,081/- in terms of builder buyer agreement dated 10.11.2011 shall be forfeited alongwith interest on delayed payment , brokerage paid and any other amount of non-refundable nature(if any). The balance amount if any , after forfeiture as mentioned above shall be refunded to you through cheque."*

6. *Following question arises for discussion and decision in this case:-*

*(i) Whether this complaint is admissible before this Authority after four years of cancellation letter issued by the respondent. In other words, whether this complaint is barred by limitation or not.*

*(ii) Whether the complainant was in any way justified in not paying the demanded amount of Rs 5,13,800/- by respondent vide letter dated 02.09.2015.*

*(iii) Whether the cancellation done by respondent by way of letter dated 08.12.2016 can be called justified or not.*

7. *Both parties shall argue upon the aforesaid questions on next date. Adjourned to 26.10.2021".*

2. Today both parties were heard on question/issues framed by Authority on the last date of hearing.

3. Initiating his arguments, ld. counsel for complainant argued that his client is seeking possession of villa no. E-144 for which he has already paid Rs 16,70,772/- against total sale consideration of Rs 51,26,755/-. The respondent was duty bound to deliver possession by 10.11.2014 in terms of BBA executed on 10.11.2011 but respondent terminated the allotment of unit on 08.12.2016 due to non-payment of Rs 5,13,288/- demanded as instalment at the stage of commencement of construction. Said cancellation cannot be called justified as

respondent had never returned the already paid amount to allottee after cancellation. It is argued that in view of prevailing facts and circumstances cause of action is still continuing as complainant had neither received back the amount paid nor received possession of booked unit. Further, he argued that demand raised of Rs 5,13,288/- was not justified on part of respondent because even as of today there is no construction at the site. It still is a vacant piece of land. He prayed for issuing directions to respondent to deliver possession of villa along with delay interest.

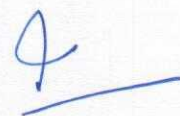
4. Rebutting the arguments of complainant, ld. counsel for respondent argued that it is because of fault on the part of complainant – allottee that allotment of booked unit was cancelled vide letter dated 08.12.2016. Said cancellation was done because complainant did not pay legitimate demand of Rs 5,13,288/- raised at the stage of commencement of construction. He referred to payment plan attached with his reply as annexure R-3, wherein it is clearly depicted that amount of Rs 16,70,772/- deposited by complainant was only on account of booking and Rs 5,13,288/- was asked at the stage of commencement of construction. He has also referred to annexure R-A/1 and A/3 to prove that excavation and PCC work was done on the plot on which villa was supposed to be constructed but due to non-payment of demanded amount by complainant it was not continued. Therefore, it is the complainant who did not adhere to payment plan of unit purchased through construction linked plan. Further he



argued that this complaint is not maintainable because it has been filed after expiry of limitation period. Cause of action arose on 08.12.2016 when cancellation was effected but complainant after lapse of 4 years has filed. Present complaint for this reason also should be dismissed.

5. After hearing submissions of both parties and perusing relevant record, the Authority is of view that parties do not dispute the fact that the site at present is a vacant piece of land. Complainant is interested in having possession of booked unit but respondent has expressed its inability to deliver possession of unit stating that construction team has already left after completing whole of the township. However, respondent had cancelled the unit on 08.12.2016 but has not refunded the amount after forfeiture which in clause 5 of cancellation letter he was supposed to do. On the other hand, complainant has not provided any reasonable justification for not honouring the demand of Rs 5,13,288/- made by respondent at the stage of commencement of construction.

6. Considering these circumstances, Authority decides that there still exists a promoter-allottee relation between the parties because of subsisting obligations thus giving rise to necessary cause of action, thereby making present complaint maintainable before this Authority. However, relief of possession of unit cannot be granted to complainant at this stage as respondent cannot be forced to start whole process of construction once again when construction team has already left. Authority observes that respondent did not commence

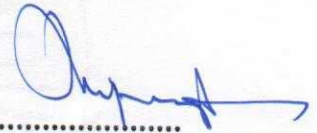


construction of the villa due to default in payments made by the complainant. Further, for the said reason respondent was justified in cancelling the allotment made in favour of the complainant.

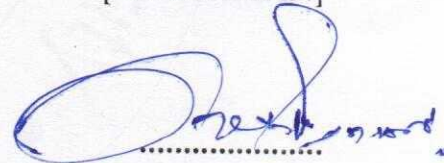
The respondent ,however, alongwith cancellation should have returned the balance amount to the complainant, which respondent failed to do.

Now, to balance equities, Authority orders that respondent is not liable to handover possession of villa and vacant plot to the complainant. The respondent, however shall return the entire amount paid by the complainant alongwith reasonable simple interest @9% from date of payment till its actual realization within 45 days of uploading of this order.

7. **Disposed of** in above terms. File be consigned to record room.



.....  
RAJAN GUPTA  
[CHAIRMAN]



.....  
ANIL KUMAR PANWAR  
[MEMBER]



.....  
DILBAG SINGH SIHAG  
[MEMBER]